STATE OF MICHIGAN

COURT OF APPEALS

SUE A. PORTER,

Plaintiff-Appellant,

v

DEPARTMENT OF EDUCATION, and MICHIGAN ACCIDENT FUND,

Defendants-Appellees.

UNPUBLISHED
March 2, 1999

No. 206721
WCAC
LC No. 00000203

Before: Markman, P.J., and Jansen and J. B. Sullivan*, JJ.

MARKMAN, P.J., (dissenting).

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I would affirm the Worker's Compensation Appellate Commission (WCAC) and therefore respectfully dissent. In my judgment, the WCAC did not misapprehend its role in reviewing the judgment of the magistrate, *Holden v Ford Motor Co*, 439 Mich 257, 267-69; 484 NW2d 227 (1992); it was duly cognizant of the deference to be given to the decision of the magistrate, *id*.; it did not misunderstand or grossly apply the substantial evidence standard, *id*.; and it offered an adequate reason grounded in the record for reversing the magistrate. *Id*. Therefore, our "judicial tendency" should be to affirm "in recognition that the Legislature provided for administrative appellate review by the seven-member WCAC . . . and bestowed on the WCAC final fact-finding responsibility" subject only to "constitutionally limited judicial review." *Id*. Because it is not "manifest that the WCAC exceeded its reviewing power," we are obligated to defer to its judgment. *Id*.

The majority, in my judgment, would engage this Court in a far broader review of the WCAC's decision. Theirs is not a "determination of error manifest in the WCAC's decision itself", but rather is based upon a "determination, directly contrary to the findings of the WCAC, that the *magistrate's* findings were in fact supported by requesite, competent, material and substantial evidence on the whole record." *York v Wayne County Sheriff's Dep't*, 219 Mich App 370, 379-80; 556 NW2d 882 (1996)(emphasis supplied).

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* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Among the facts evaluated here by the WCAC were (1) plaintiff's history of alcohol and drug abuse; (2) plaintiff's history of psychiatric care and medication; (3) plaintiff's specific mental condition variously described as a "bipolar disorder" or "manic depressiveness" by psychiatrists; (4) psychiatric testimony that plaintiff's mental condition was susceptible to being triggered "without any stressful precipitants"; (5) psychiatric testimony that plaintiff is the "type of individual that tends to blame her problems on others and virtually has no personal insight"; (6) psychiatric testimony that "there is no connection between [plaintiff's] employment history and her psychiatric symptoms"; (7) plaintiff's two nervous breakdowns; (8) plaintiff's history of serious family trauma, including a nephew who was charged with murdering five people and a brother apparently addicted to heroin; (9) plaintiff's history of extended medical leaves of absence, for both psychiatric and non-psychiatric purposes; and (10) plaintiff's two rapes and subsequent abortions.

The WCAC's responsibility in this case was to determine whether plaintiff's employment had "significantly" affected her mental illness, by analyzing relevant occupational and non-occupational factors. *Gardner v Van Buren Public Schools*, 445 Mich 23, 47, 49-50; 517 NW2d 1 (1994). After evaluating the circumstances set forth above, as well as allegations of "harassment" of plaintiff by her work supervisors -- the latter described by the WCAC as consisting largely of memos written "calling plaintiff's attention to the fact that she had too many aged files . . . and warning that her work performance had to be improved or she would be subject to disciplinary procedures" -- the WCAC concluded that it had not. In my judgment, the WCAC did not err, much less abuse its discretion, in making this determination.

Nor did the WCAC err, as the majority suggests, in failing to treat plaintiff's tortured history merely as a "pre-existing" condition, the entirety of which suddenly lost its status as a nonemployment condition once plaintiff ventured into the workplace. The problem, of course, is that mental conditions, "pre-existing" or otherwise, continue to impose their burdens and symptoms upon individuals even after job applications are accepted. Such conditions are not peremptorily transformed into "employment" conditions through the receipt of a paycheck. While, as time passes, it may well be that preexisting mental conditions become so intertwined with work-related stresses that it becomes increasingly difficult to separate the two, it nevertheless is incumbent under the law that they *be* separated. This is what the WCAC has reasonably sought to do here.

I would, therefore, affirm.

/s/ Stephen J. Markman